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New York, NY 10003

January 30, 2018

VIA ECF

The Honorable Vernon S. Broderick
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *BuzzFeed, Inc. v. U.S. Department of Justice*, Case No. 17-cv-7947 (VSB)

Dear Judge Broderick:

The parties to the above-referenced matter respectfully submit this letter in advance of the initial conference scheduled for February 8, 2018 at 11 a.m. *See* Dkt. 10 (Order and Notice of Initial Conference). Counsel for BuzzFeed, Inc. (“BuzzFeed”) have conferred with counsel for U.S. Department of Justice (“DOJ”), who joins in this letter.

This is an action brought pursuant to the Freedom of Information Act (“FOIA”) as a result of a dispute over the DOJ’s processing of BuzzFeed’s request for a public record. The parties believe that this case, therefore, is a review of an agency action. As such, the parties understand that Local Civil Rule 16.1 exempts this matter from Fed. R. Civ. P. 16(b)’s requirement of a mandatory scheduling order. *See* L. Civ. R. 16.1 (“Matters involving . . . reviews from administrative agencies are exempted from the mandatory scheduling order required by Fed. R. Civ. P. 16(b)”). For that reason, the parties respectfully request to be relieved of the obligation to submit a proposed Civil Case Management Plan pursuant to Fed. R. Civ. P. 26(f) and Your Honor’s January 23 Order.

In addition, the parties further agree that matters covered by Your Honor’s Case Management Plan and Scheduling Order template are not entirely applicable here because of the nature of this case as one brought under FOIA. The parties anticipate that, as with most cases arising under FOIA, this case will be resolved through cross-motions for summary judgment without the need for discovery. *See Wood v. FBI*, 432 F.3d 78, 85 (2d Cir. 2005) (“[D]iscovery relating to . . . the exemptions [an agency] claims for withholding records generally is unnecessary . . .”). As such, the parties respectfully request that Your Honor exercise his broad discretion to manage pre-trial proceedings and approve of the briefing schedule set forth in Paragraph 3 without the need of a civil case management plan and scheduling order. *Id.* at 84.

Pursuant to Your Honor’s January 23 Order, the parties have set forth below, in separate paragraphs, the following matters:

- 1. A brief description of the action and principle defenses.** This is an action under FOIA, 5 U.S.C. § 552, in which BuzzFeed seeks to compel the DOJ to release the Report

of Investigation (“Report”) dated May 1, 2017, summarizing the investigation of a complaint “alleging that a United States Attorney (USA), now retired, engaged in misconduct by engaging in an intimate personal relationship with a high-level, but subordinate, supervisor in the Office (Supervisory AUSA).” *See* Dkt. 1 (Compl.) ¶¶ 13-19. Specifically, BuzzFeed seeks the disclosure of information redacted from the Report, including the identities of the USA and Supervisory AUSA who were the subjects of the investigation and all other information redacted from the Report except information identifying any witnesses and third parties to the investigation.

For its part, the DOJ asserts that all of the redacted information is exempt from disclosure under 5 U.S.C. § 552(b). *See* Dkt. 9 (Answer) at 4. Specifically, the DOJ asserts that the redacted information is exempt from disclosure pursuant to Exemption 6, which exempts material the release of which would constitute a clearly unwarranted invasion of personal privacy, and Exemption 7(C), which exempts material compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* Compl., Ex. 5 (citing 5 U.S.C. § 552(b)(6), *id.* § 552(b)(7)(C)).

- 2. A brief explanation of why jurisdiction and venue lie in this Court.** This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue is proper in this District under 5 U.S.C. § 552(a)(4)(B) because the requester, BuzzFeed, a Delaware corporation, has its principal place of business in this District.
- 3. A brief description of all contemplated and/or outstanding motions.** The parties dispute whether the information redacted by the DOJ was properly withheld. The DOJ intends to file a motion for summary judgment to justify its withholdings, and BuzzFeed intends to file a cross-motion for summary judgment challenging the withholdings.

The parties respectfully request that the Court enter a briefing schedule in lieu of the initial conference and propose the following schedule: (1) the DOJ files its motion for summary judgment on or before March 12, 2018; (2) BuzzFeed file its opposition brief and cross-motion for summary judgment on or before April 11, 2018; (3) the DOJ files its opposition to BuzzFeed’s summary judgment motion and its reply brief on or before April 27, 2018; and (4) BuzzFeed files its reply brief on or before May 11, 2018.

- 4. A brief description of any discovery that has already taken place, and/or that which will be necessary for the parties to engage in meaningful settlement negotiations.** As most FOIA cases are resolved without discovery, the parties have not yet engaged in any discovery and do not anticipate a need for such discovery, nor believe that any such discovery would allow the parties to engage in any meaningful settlement negotiations.
- 5. A Brief Description of Prior Settlement Discussions (Without Disclosing the Parties’ Offers or Settlement Positions) and the Prospect of Settlement.** On November 29, 2017, the parties met and conferred telephonically to discuss their disputes. The parties did not resolve those disputes and do not believe that a settlement will be reached as to all their disputes. The parties did, however, refine their points of disagreement as explained

above in Paragraph 1, and BuzzFeed no longer seeks the identities of any witnesses and third parties to the investigation named in the Report.

6. **The Estimated Length of Trial.** As with most FOIA cases, the parties anticipate that this case will be resolved on cross-motions for summary judgment, and thus will not require a trial. *See Wood*, 432 F.3d at 85.
7. **Any other information that the parties believe may assist the Court in advancing the case to settlement or trial, including, but not limited to, a description of any dispositive issue or novel issue raised by the case.** The parties are not aware of any such information.

Pursuant to Rule 1.H of Your Honor's Individual Rules & Practices in Civil Cases, in addition to the matters explained above, the parties represent that no previous adjournments have been requested. The parties thank the Court for its time and consideration on these matters.

Respectfully Submitted,

BuzzFeed, Inc.

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